

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DWIGHT MCINTYRE,

Plaintiff,

v.

NAPHCARE INC. et al.,

Defendants.

2:16-cv-02107-JCM-PAL

ORDER

I. DISCUSSION

14 On July 13, 2017, the Court issued a screening order permitting some claims to
15 proceed, dismissing some claims with prejudice, and dismissing other claims with leave to
16 amend. (ECF No. 4 at 8-9). The Court granted Plaintiff 30 days from the date of that order to
17 file an amended complaint curing the deficiencies of the complaint. (*Id.* at 9). The Court
18 specifically stated that if Plaintiff chose not to file an amended complaint, the action would
19 proceed against Defendants Frank Ryan, Brian Poirier, and Ted Hanf for deliberate
20 indifference to serious medical needs (counts I and II) only. (*Id.* at 10). Plaintiff has not filed
21 an amended complaint. Pursuant to the screening order, this action shall proceed against
22 Defendants Frank Ryan, Brian Poirier, and Ted Hanf for deliberate indifference to serious
23 medical needs (counts I and II) only.

II. CONCLUSION

25 For the foregoing reasons, IT IS ORDERED that, pursuant to the Court's screening
26 order (ECF No. 4), this action shall proceed against Defendants Frank Ryan, Brian Poirier, and
27 Ted Hanf for deliberate indifference to serious medical needs (counts I and II) only.

1 IT IS FURTHER ORDERED that given the nature of the claim(s) that the Court has
2 permitted to proceed, this action is **STAYED** for ninety (90) days to allow Plaintiff and
3 Defendant(s) an opportunity to settle their dispute before the \$350.00 filing fee is paid, an
4 answer is filed, or the discovery process begins. During this ninety-day stay period, no other
5 pleadings or papers shall be filed in this case, and the parties shall not engage in any
6 discovery. The Court will refer this case to the Court's Inmate Early Mediation Program, and
7 the Court will enter a subsequent order. Regardless, on or before ninety (90) days from the
8 date this order is entered, the Office of the Attorney General shall file the report form attached
9 to this order regarding the results of the 90-day stay, even if a stipulation for dismissal is
10 entered prior to the end of the 90-day stay. If the parties proceed with this action, the Court
11 will then issue an order setting a date for Defendants to file an answer or other response.
12 Following the filing of an answer, the Court will issue a scheduling order setting discovery and
13 dispositive motion deadlines.

14 IT IS FURTHER ORDERED that "settlement" may or may not include payment of
15 money damages. It also may or may not include an agreement to resolve Plaintiff's issues
16 differently. A compromise agreement is one in which neither party is completely satisfied with
17 the result, but both have given something up and both have obtained something in return.

18 IT IS FURTHER ORDERED that if the case does not settle, Plaintiff will be required to
19 pay the full \$350.00 filing fee. This fee cannot be waived. If Plaintiff is allowed to proceed *in*
20 *forma pauperis*, the fee will be paid in installments from his prison trust account. 28 U.S.C.
21 § 1915(b). If Plaintiff is not allowed to proceed *in forma pauperis*, the \$350.00 will be due
22 immediately.

23 IT IS FURTHER ORDERED that if any party seeks to have this case excluded from the
24 inmate mediation program, that party shall file a "motion to exclude case from mediation" on
25 or before twenty-one (21) days from the date of this order. The responding party shall have
26 seven (7) days to file a response. No reply shall be filed. Thereafter, the Court will issue an
27 order, set the matter for hearing, or both.

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1 IT IS FURTHER ORDERED that the Clerk of the Court shall electronically **SERVE** a
2 copy of this order, the original screening order (ECF No. 4) and a copy of Plaintiff's complaint
3 (ECF No. 5) on the Office of the Attorney General of the State of Nevada, attention Barbara
4 Fell.

5 IT IS FURTHER ORDERED that the Attorney General's Office shall advise the Court
6 within twenty-one (21) days of the date of the entry of this order whether it will enter a limited
7 notice of appearance on behalf of Defendants for the purpose of settlement. No defenses or
8 objections, including lack of service, shall be waived as a result of the filing of the limited notice
9 of appearance.

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11 DATED: This 24th day of August 2017.

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United States Magistrate Judge

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DISTRICT OF NEVADA**

DWIGHT MCINTYRE,
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2:16-cv-02107-JCM-PAL
REPORT OF ATTORNEY GENERAL
RE: RESULTS OF 90-DAY STAY

NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM. THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.

19 On _____ [*the date of the issuance of the screening order*], the Court
20 issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C. §
21 1915A, and that certain specified claims in this case would proceed. The Court ordered the
22 Office of the Attorney General of the State of Nevada to file a report ninety (90) days after the
23 date of the entry of the Court's screening order to indicate the status of the case at the end
24 of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

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REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

- A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)
- A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.
- No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. (If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)
- No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for _____ [enter date].
- No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.
- None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

* * * * *

Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check **ONE** of the four statements below and fill in any additional information as required, then proceed to the signature block.]

- The parties engaged in settlement discussions and as of this date, the parties have reached a settlement (even if the paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

- 1 _____ The parties engaged in settlement discussions and as of this date, the parties
2 have not reached a settlement. The Office of the Attorney General therefore
3 informs the Court of its intent to proceed with this action.
4 _____ The parties have not engaged in settlement discussions and as of this date, the
5 parties have not reached a settlement. The Office of the Attorney General
6 therefore informs the Court of its intent to proceed with this action.
7 _____ None of the above three statements fully describes the status of this case.
8 Contemporaneously with the filing of this report, the Office of the Attorney
9 General of the State of Nevada is filing a separate document detailing the status
10 of this case.

7 Submitted this _____ day of _____, _____ by:

8 Attorney Name: _____

9 Print

Signature

10 Address: _____

Phone: _____

11 _____

Email: _____

12 _____

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